UNITED STATES DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF IOWA CENTRAL DIVISION

)
Fraserside IP, LLC,)
Plaintiff,)
v.)
)
Roland Waterweg d/b/a) Docket No. 11-3043-MWB
www.eskimotube.com and www.tjoob.com,)
and www.eskimotube.com and)
www.tjoob.com, and John Does 1-100)
and John Doe Companies 1-100,)
Defendants.)
	_)

DEFENDANTS ROLAND WATERWEG, WWW.ESKIMOTUBE.COM AND WWW.TJOOB.COM'S MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(2), and 12(b)(6), Defendant Roland Waterweg respectfully moves for the dismissal of the Plaintiff's complaint in its entirety. As grounds for this Motion, Mr. Waterweg states that:

- 1. Mr. Waterweg is not subject to personal jurisdiction in Iowa and, as such, the Complaint must be dismissed pursuant to Fed. R. Civ. P. 12(b)(2); and
- 2. The purported assignment of intellectual property to Plaintiff, Fraserside IP, LLC ("Fraserside IP") was a sham (inasmuch as the original registrants and owners continue to assert ownership over the intellectual property). Even if the assignment was not a sham, it is *void ab initio* as it was made in contravention of an injunction against the assignors. Finally, as the present litigation is being pursued without the knowledge or approval of the plaintiff's court-

appointed receiver, the Plaintiff has no standing to proceed. Accordingly, the Complaint must be dismissed pursuant to either Fed. R. Civ. P. 12(b)(1) or 12(b)(6).

In further support of this Motion, xHamster relies on the accompanying memorandum of law.

Respectfully submitted, xHamster Solutions, Ltd. By its attorneys,

/s/Evan Fray-Witzer

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for

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¹ The Plaintiff's claims arise under the federal Copyright and Trademark laws. If it does not have standing to bring such claims, then there are no claims over which this court would have subject matter jurisdiction. Alternatively, the dismissal could be under Fed. R. Civ. P. 12(b)(6), since the Fraserside IP's lack of standing also means that it has failed to state a claim upon which relief may be granted.

ECF CERTIFICATE OF SERVICE

I, Evan Fray-Witzer, hereby certify that on November 4, 2011, a copy of the above document was served on Chad Bellville, attorney for the plaintiff, through the Court's ECF system in accordance with FRCP 5. In addition, a copy of the above document was served by email on Thomas Kummer, Esq., counsel for Eric Johnson, the plaintiff's court-appointed receiver.

/s/ Evan Fray-Witzer